

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

CR No. 1:24-cr-00174-SAG

v.

ROBERT KROP,

Defendant

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MOTION FOR CONTINUANCE FOR WITNESS UNAVAILABILITY

Defendant Robert Justin Krop (“Mr. Krop”), by and through undersigned counsel, respectfully move this Court to continue the trial in the above matter because of the unavailability of a witness and respectfully says in support thereof:

1. Today, it came to the attention of the undersigned that a material witness in Mr. Krop’s defense, Daniel O’Kelly of Grand Island, Florida, is without power indefinitely, and is unavailable for trial next week and into the early part of the following week at least, because of his being in the direct path of the recent Florida hurricane Milton.
2. In being without electric power and with roads either closed from debris and otherwise blocked, and having individuals staying with him next week preventing him from preparing with the defense, he is also unavailable for video testimony.
3. Mr. O’Kelly is the former ATF Senior Special Agent for Tampa, Florida, senior ATF firearms instructor and coordinator and international firearms consultant. His personal knowledge from his over 40 years of full-time experience as a Police Officer, ATF Agent and Firearms Specialist, Investigator, Range Instructor, teacher of firearm technology, firearms manufacturer and collector has provided him with essential knowledge and ability

to testify in defense of Mr. Krop. His knowledge and information of investigations, both criminal and civil, has included numerous topics including testimony in State, Superior, Circuit, District and Federal Courts since 1978 on federal and state firearm regulations, international regulations, ATF rulings, ATF compliance and procedures, and related matters. He has testified in at least four federal trials on the topic of federal firearms definitions from 2014 to 2019 which has resulted in the ATF undertaking a two to five year re-write of the definition of a firearms “frame or receiver” which new ATF definition was enjoined two days later by a federal court. He is a contracted firearms instructor for several U.S. agencies, holds a patent registered with the U.S. patent office as a firearms designer, and serves as an ATF compliance manager for corporate entities including the largest firearms retailer in the world, Cabela’s Inc.

4. Mr. O’Kelly’s testimony is essential to Mr. Krop’s defense and will be based on his particularized experience as a police officer, ATF Senior Special Agent and Instructor and ATF compliance manager for Class III federal firearms licensees (FFL) and he will provide fact and lay opinion testimony about the rules, regulations, and standard operating procedures governing the ATF requirements for Class III FFLs.
5. Federal Rule of Evidence 701 and the Fourth Circuit permit lay opinion testimony from police officers on matters essential to the defense. *United States v. Perkins*, 470 F.3d 150, 155–56 (4th Cir. 2006) (“Because their testimony was framed in terms of their eyewitness observations and particularized experience as police officers, we have no trouble finding that their opinions were admissible under Rule 701.”); *see also United States v. Agee*, No. 119CR00103TWPDLP, 2021 WL 2894784, at *2 (S.D. Ind. July 9, 2021) (allowing “four SBA witnesses to provide fact and lay opinion testimony about the rules, regulations, and

standard operating procedures governing the SBA programs...”); *United States v. Oms-Rivera*, 422 F. Supp. 3d 482, 486 (D.P.R. 2019) (allowing Social Security Administration claims representative to offer lay opinion testimony concerning disability insurance regulations, the application process, and SSA reporting requirements”).

6. Alternatively, the defense moves the Court for a continuance and for additional time to name Mr. O’Kelly as an expert and as such would supplement with a written opinion promptly once he is available after recovery from the hurricane power outages and road and debris matters.
7. A continuance would be therefore essential to the defense of Mr. Krop.
8. Assistant United States Attorney Christine Goo was telephoned informally with a request for consent which Ms. Goo declined.

WHEREFORE, for the foregoing reasons, Mr. Krop moves the court to continue the trial in the interests of justice for Mr. Krop’s defense.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on October 11, 2024, a copy of the foregoing Motion for Continuance for Witness Unavailability was filed via ECF, which caused copies to be sent to all parties of record.

/s/

Daniel L. Cox